

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No. EB-02-TC-094
)	
Time Warner Communications)	CUID No. NY0887 (Fairport Village)
)	
Petition for Reconsideration)	

ORDER ON RECONSIDERATION

Adopted: July 16, 2002

Released: July 17, 2002

By the Chief, Enforcement Bureau:¹

1. In this Order we consider a petition for reconsideration and an amendment to the petition (together "Petition") of Order, DA 97-1867 ("Prior Order"),² filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator").³ The Prior Order resolved a complaint against Operator's January 1, 1997 cable programming services tier ("CPST") rate increase, found Operator's CPST rate to be unreasonable and ordered refunds for the period from January 23, 1997 (the date of the filing of the first valid complaint) through December 31, 1997. Operator's refund liability was held in abeyance pending resolution of its appeal of the *Uniform Rates Order*.⁴ In this Order, we grant Operator's Petition in part and order refunds.

2. Under the provisions of the Communications Act⁵ that were in effect at the time the complaints were filed, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")⁶ and the Commission's rules required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),⁷ and the Commission's rules

¹ Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

² *In the Matter of Time Warner Communications*, DA 97-1867, 12 FCC Rcd 23757 (CSB 1997).

³ The term "Operator" includes Operator's predecessors and successors in interest.

⁴ *In Re Petition of Time Warner Cable*, DA 98-1219, 13 FCC Rcd 12185 (CSB 1998).

⁵ 47 U.S.C. §543(c) (1996).

⁶ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁷ Pub. L. No. 104-104, 110 Stat. 56 (1996).

implementing the legislation ("Interim Rules"),⁸ required that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁹ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.¹⁰

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.¹¹ Operators may file an FCC Form 1210 to justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation.¹² Operators may justify their rates on an annual basis using an FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.¹³ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹⁴

4. In its Petition, Operator asserts that it should not have to initiate any refunds until its appeal of the *Uniform Rates Order* is resolved. Operator's application for review of the *Uniform Rates Order* was denied on August 16, 1999.¹⁵ Therefore, that portion of Operator's Petition is now moot. In addition, Operator included amended FCC Form 1240s with its Petition. Operator asserts that the amended FCC Form 1240s are consistent with the bifurcated methodology approved by the Cable Services Bureau for Operator following the Commission's adoption of the *Time Warner Social Contract*.¹⁶ We agree that Operator's methodology is consistent with prior Cable Service Bureau orders,¹⁷ and we accept Operator's amended FCC Form 1240s through 1997. Upon review of Operator's amended FCC Form 1240s, we accept Operator's calculated maximum permitted rate ("MPR") of \$22.15, effective January 1, 1997. Because Operator's actual CPST rate of \$22.47, effective January 23, 1997 through December 31, 1997, exceeds its calculated MPR of \$22.15, we find Operator's actual CPST rate of \$22.47, effective January 23, 1997 through December 31, 1997, to be unreasonable.¹⁸

⁸ See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

⁹ See Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

¹⁰ See Section 76.957 of the Commission's rules, 47 C.F.R. §76.957.

¹¹ See Section 76.922 of the Commission's rules, 47 C.F.R. §76.922.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See *In the Matter of Time Warner Cable*, FCC 99-217, 14 FCC Rcd 13760 (1999).

¹⁶ See *In the Matter of Social Contract for Time Warner*, 11 FCC Rcd 2788 (1996).

¹⁷ See, e.g. *In the Matter of Time Warner Cable*, DA 98-1826, 13 FCC Rcd 19534 (CSB 1998).

¹⁸ These findings are based solely on the representations of Operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein. Information regarding the specific adjustments made to Operator's FCC Forms can be found in the public files for the above-referenced community which are available in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals

5. Operator did not file a refund plan. Rather than calculating its refund liability for 1997, the period reviewed in the Prior Order, Operator submitted additional FCC Form 1240s covering the period January 1, 1998 through December 31, 1998, which purport to true-up Operator's 1997 refund liability. We have not reviewed the 1998 FCC Form 1240s, and there is no pending complaint requiring us to do so. We will not accept FCC Form 1240s filed subsequent to a released order simply to allow an Operator to attempt to true-up refund liability and avoid the payment of refunds.¹⁹ In addition, the Bureau does not have the resources to review additional filings made subsequent to the release of an order. We cannot assume that Operator calculated its 1998 FCC Form 1240s accurately. A review of the additional filing might reveal errors were made in the calculation of the 1998 rate. We therefore reject Operator's 1998 FCC Form 1240s.

6. We calculate Operator's refund liability as follows: For the period from January 23, 1997 through December 31, 1997, we calculate an overcharge of \$0.32 per month per subscriber, in accordance with this Order. Our total calculation, including interest through July 31, 2002, equals \$7,915.00. We order Operator to refund this amount, plus franchise fees and any additional interest accrued from July 31, 2002 to the date of refund, to its CPST subscribers within 60 days of the release of this Order.

7. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that Operator's Petition for Reconsideration IS GRANTED IN PART TO THE EXTENT INDICATED HEREIN.

8. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that In the Matter of Time Warner Communications, DA 97-1867, 12 FCC Rcd 23757 (1997), IS MODIFIED TO THE EXTENT INDICATED HEREIN.

9. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rate of \$22.47, charged by Operator in the community referenced above, effective January 23, 1997 through December 31, 1997, IS UNREASONABLE.

10. IT IS FURTHER ORDERED, pursuant to Section 76.962 of the Commission's rules, 47 C.F.R. § 76.962, that Operator shall refund to subscribers in the franchise area referenced above the total amount of \$7,915.00, plus franchise fees, plus any interest accruing from July 31, 2002 to the date of refund, within 60 days of the release of this Order.

II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

¹⁹ See, e.g., *In the Matter of Cableone*, DA 02-522, 17 FCC Rcd 4300 (CSB 2002).

11. IT IS FURTHER ORDERED, pursuant to Section 76.962 of the Commission's rules, 47 C.F.R. § 76.962, that Operator shall file a certificate of compliance with the Chief, Enforcement Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau